*** THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

+ WRIT PETITIONS NOs. 26203 OF 1999 & 21106 OF 2000

% MONDAY, THE TWENTYFIRST DAY OF MARCH,

TWO THOUSAND FIVE

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A.Venkateshwara Rao S/o Sri Rama Sastrulu, aged: Major, Resident of Buttaiahpet, Machilipatnam, Krishna District & Others

Petitioners

Versus

$ Bharat Electronics Limited, Machilipatnam Unit,

P.B.NO.26, Rabindranath Tagore Road, Machilipatnam rep. by its General Manager.

Respondent

! Counsel for the petitioners : Mr. M.Ramesh Ranganathan, Senior Advocate with Mr. R.PAMPAPATI REDDY, Advocate

^ Counsel for the respondents: Mr. E. Manohar, Senior Advocate instructed by Mr. P. Kamalakar, Advocate

< Gist :

>Head Note:

? 1) AIR 1964 SC 1260

2) AIR 1997 SC 1125

3)(2004)4 SCC 268

4) (1976)1 SCC 496

5) AIR 1971 SC 33

6) AIR 1985 SC 1147

7) (1998)8 SCC 1

8) (2003)2 SCC 107

9) AIR 1967 SC 1889

10) AIR 1955 SC 19

11) AIR 1958 SC 538

12) AIR 1974 SC 1

13) AIR 1974 SC 1631

14) AIR 1970 SC 21

15) AIR 1961 SC 552

16) AIR 1971 SC 1801

17) (1991)2 SCC 48

18) (1994)6 SCC 349

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NOs : 26203 of 1999 & 21106 of 2000

W.P.NO. 26203/99:-

Between:

1. A.Venkateshwara Rao S/o Sri Rama Sastrulu, aged: Major, Resident of Buttaiahpet, Machilipatnam, Krishna District.

2. Y.Venkata Ramana, s/o Sri Satyanarayana Rao, aged: Major, Resident of 15-551, Edepalli, Machilipatnam, Krishna District.

3. T.Umamaheshwara Reddy s/o Sri Krishna Reddy, aged: Major, Resident of MIG-28, APHB Colony, Machilipatnam, Krishna District.

4. Z.Panduranga Reddy, s/o Rami Reddy, aged: Major, Resident of 15-554/2, Edepalli, Machilipatnam, Krishna District.

5. M.A.P.Hanumantha Rao so late Sri Bhanu Murthy, aged: Major, Resident of Marripati Home, Khojjilipet, Machilipatnam, Krishna District.

6. G.Adisesha Rao s/o late Sri Dharma Rao, aged: Major, Resident of Khalekhanpet, Machilipatnam, Krishna District.

7. K.Balachandravara Prasad s/o Sri Nagannaidu, aged: Major, Resident of Bhaskarapuram, Chilakalapudi Post, Machilipatnam, Krishna District.

8. B.Venkateswara Rao s/o late Sri Bhujanga Rao, aged: Major, Resident of Batchupet, Machilipatnam, Krishna District.

9. G.Venkateswara Rao s/o late Sri Veera Raghavulu, aged: Major, Resident of MIG-29, APHB Colony, Machilipatnam, Krishna District.

10. D.Srinivasa Saastry, s/o Sri Narayana Sastry, aged: Major, Resident of Buttaiahpet, Machilipatnam, Krishna District.

11. B.S.V.Prabhakara Rao s/o Sri B.S.L.N.M.Naidu, aged: Major, Resident of MIG-182, APHB Colony, Machilipatnam, Krishna District.

12. Y.Uma Bala s/o Sri Y.V.Raghava Rao, aged: Major, Resident of Balaramunipet, Machilipatnam, Krishna District.

13. V.Pullayya Sastry s/o Sri Ramakrishna Rao, aged: Major, Resident of Behind NCC Office, Brahmapuram, Machilipatnam, Krishna District.

14. Somasekhar s/o Late Sri Venkateshwara Rao, aged: Major, Resident of Edepalli, Sringarajuvari street, Machilipatnam, Krishna District.

15. M.Durga Rao s/o Appa Rao, aged: Major, Resident of Buttaiahpet, Machilipatnam, Krishna District.

16. M.V.Sita Pathi Rao s/o Kameswara Rao, aged: Major, resident of Edepalli, Machilipatnam, Krishna District.

17. P.Harinadh s/o Sri P.V.Suryanarayana Rao, aged: Major, Resident of Narasimha Nagar, Chilakalapudi post, Machilipatnam, Krishna District.

18. T.S.S.R.Prasad s/o late Sri Jagga Rao, aged: Major, Resident of Englishpalem, Machilipatnam, Krishna District.

19. A.Vijayasekhar Rao S/o Sri Venkateshwarlu, aged: Major, Resident of Jagannadhapuram, Machilipatnam, Krishna District.

..... PETITIONERS

AND

Bharat Electronics Limited, Machilipatnam Unit,

P.B.NO.26, Rabindranath Tagore Road, Machilipatnam – 521 001.

Rep. by its General Manager.

....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in placing the petitioners who are all B.Sc.(M.P.C.) Graduates in Career Path-V of the Career Path scheme of the Machilipatnam Unit of Bharat Electronics Limited, as arbitrary, discriminatory, illegal, contrary to the 1993 career path scheme and in violation of Articles 14 and 16 of the Constitution of India and for a consequential direction to the respondent to treat the petitioners herein on par with diploma holders in Engineering with regards all terms and conditions of service and place them in Career Path-VI for promotion to the next higher grades.

For the Petitioner: Mr. M.Ramesh Ranganathan, Senior Advocate

For the Respondent : Mr. E. Manohar, Senior Advocate instructed by Mr. P. Kamalakar, Advocate

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AND

Bharat Electronics Limited, Machilipatnam Unit,

P.B.NO.26, Rabindranath Tagore Road, Machilipatnam – 521 001.

Rep. by its General Manager.

....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in placing the petitioners [who are all B.Sc.(M.P.C.) Graduates recruited along with Diploma holders in the same grade, same pay scale], in Career Path-V of Memorandum of Settlement dated 28-04-2000 i.e., Modified Career Plan scheme of the Machilipatnam unit of Bharat Electronics Ltd., as arbitrary, discriminatory and in violation of Articles 14 and 16 of the Constitution of India and for a consequential direction to the respondent to treat the petitioners on par with Diploma holders in Engineering with regards to all terms and conditions of service and place them in Career Path-VI for promotion to next higher grades.

For the Petitioner: Mr. R. Pampapati Reddy, Advocate

For the Respondent : Mr. E. Manohar, Senior Advocate instructed by Mr. P. Kamalakar, Advocate

The Court Made the Following :

:: COMMON ORDER ::

The petitioners (19) in number are all working as Junior Laboratory Officers earlier designated as Technical Assistants, in the Machilipatnam Unit of Bharat Electronics Limited, (for short 'the BEL') a public sector undertaking and an instrumentality of the State.

A Brief History :-

A company in the private sector by name “The Andhra Scientific Company Limited” was established in 1926 in Machilipatnam, Krishna district in the State of Andhra Pradesh, for the manufacture of laboratory and educational equipment. The company was engaged in the manufacture of optical instruments required for medical, survey and industrial applications. It also entered the defense field and manufactured optics based components for the defense requirements. The company had fallen sick and was closed during 1971-72. In 1972, the Ministry of Defence, in the public interest, took over the management of the Company and ran it for about a decade. The Andhra Scientific Company Limited (Acquisition and Transfer of Undertakings) Act 1983 was enacted by the Parliament whereby *inter alia* the assets and liabilities of the Company were taken over by the Union. By another order of the Union Government, the unit of the erstwhile Andhra Scientific Company Limited was vested with an existing public sector undertaking, Bharat Electronics Limited, Bangalore, in the year 1983. As a result, the Machilipatnam establishment became one of the 9 units of the BEL.

The petitioners, graduates in Science B.Sc., (MPC) were recruited at the non-worker – supervisory level as Technical Assistant Trainees II on various dates, during 1983-88. On recruitment, they underwent on-job training for a period of one year and on completion were confirmed in wage group VII in the Machilipatnam Unit of the BEL. The relevance of absorption in Wage group-VII will be dealt with during the course of this judgment, as it is relevant to the *lis* presented herein. Suffice it to record, at this stage, that the petitioners on recruitment into service were placed in Wage group VII along with Diploma Holders who were also recruited as Technical Assistant Trainees. The Diploma Holders were also recruited in the Machilipatnam unit as Technical Assistants II after a one year on-job training, as were the petitioners. Technical Assistants both Science graduates and Diploma holders, were working in integrated and complimentary operations in the optical instrumentation area. There was no diploma in Optics offered by any educational institution in the country, either at the time of recruitment of the petitioners and the other Diploma holders during the year 1983-88 or even till date. These are undisputed facts.

During the period of the initial management of the Machilipatnam unit by the B.E.L., there was no defined promotion policy formally expressed in any instrument either by way of Rules or administrative instructions. The Technical Assistants of the Machilipatnam unit of the BEL were being promoted from one wage group to the next without any clear cut policy on promotions or distinction between the science graduates and diploma holders or those with I.T.I. qualifications. It also requires to be noticed that the Machilipatnam Unit is the only optical instrumentation unit in the country among the nine (9) units administered by the B.E.L. As no specialized qualification in optics at the diploma level was imparted in the country in any educational institution, in the Machilipatnam unit Diploma Holders in other disciplines like Mechanical Engineering and science graduates with M.P.C qualifications were recruited as 'Technical Assistants' and imparted in-employment training and then employed in the optical engineering departments.

On account of the specialized operations of the Machilipatnam unit of the B.E.L. in the optical engineering area, the recruitment policy in effect was always distinct from other units of the B.E.L. At the Machilipatnam unit, in the Technical Cadre at the initial level, candidates with 10^{th} class qualification are recruited and given three years on-job training on a monthly stipend and thereafter placed in Wage group-4 on par with I.T.I. certificate holders. At the supervisory level, B.Sc., (M.P.C.) graduates and candidates possessing diploma in Mechanical Engineering were being recruited and inducted in Wage group-VII. They were initially designated as Technical Assistant Trainees after providing them one year 'on job' training common for both science graduates and diploma holders. On induction into Wage group-VII, it is axiomatic that both Diploma Holders and science graduates were entitled to and paid identical scales of pay and other emoluments.

The grievance of the petitioners is as regards the accelerated career opportunities provided to the class of Diploma Holders, while denying similar treatment to their class i.e., Science Graduates, a situation brought about by a promotion policy introduced for the first time in the Machilipatnam unit in the year 1993 and with effect from 1.11.1991 (for short 'the 1991 career plan').

By a Memorandum of Understanding dated 11.2.1993, arrived at between the

management of the Machilipatnam Unit of the B.E.L and its workmen represented by the Andhra Scientific Company Employees Union (a recognized union), a career plan scheme was evolved to provide equitable opportunities for career growth to employees. The MOU noted the existence of an earlier career plan providing promotional opportunities to non-executive employees of the Machilipatnam Unit, which was introduced by an office order dated 16.5.1986 and the need for its review. The effective date of implementation of the revised career plan is specified in the MOU to be 1.11.1991. Paragraph-5 of the MOU recorded an agreement between the parties to the settlement, that some of the aspects raised by the recognized union could be referred to the Corporate Office for consideration. Among the aspects to be so referred, is the question whether *"existing Technical Assistants with B.Sc. qualification inducted in wage group VII be considered for career path VI on par with Three Year Diploma Holders because of the nature of the work of this unit."* (Para-5b).

Annexure-A to the MOU dated 11.2.1993 set out the career plan scheme for non-executives. Paragraph-4 of this scheme specified the several career paths into which the employees engaged in various disciplines/trades in the Machlipatnam Unit are to be categorized depending upon educational qualifications and skills at the relevant induction points. Six career paths are enumerated. A note to Paragraph-4 enumerates a modified spectrum of career paths for existing employees of the Machilipatnam Unit. This modified enumeration is set out in Annexure-II of the 1991 career plan. According to the Annexure-II, Sl.No.1 is the career path No.I for unskilled employees having a qualification of less than 8^{th} standard; career path No.II for semi-skilled employees having 8^{th} standard; career path No.III for semi-skilled employees having a qualification higher than 8^{th} standard but less than SSLC or equivalent; career path No.IV for skilled category-II employees who had a qualification of SSLC + in Company training in a specified Trade; career path No.V for skilled category-I employees with qualifications of less than SSLC + ITI/3 years Company Training/Graduate with specific skills and career path No.VI for employees categorized as technician having diploma in Engineering or equivalent/Post Graduation. Annexure-I to the 1991 career plan sets out details of classification of jobs in respect of the above six career paths. According to Annexure-I posts fitted in career path V i.e., those with

qualifications of SSLC+ITI/Graduation+Proficiency in Trade, include the post of Technician and entitled to wage groups 4 to 10 whereas the posts fitted into career path No.VI i.e., those with qualification of diploma in Engineering or equivalent/Post Graduation are entitled to wage groups 7 to 10 and thereafter to further career prospects to the technical cadres 1,2 and 3.

As a consequence of the 1991 career plan, the diploma holders and the B.Sc. MPC Graduates (the petitioner's class), who were together recruited in the Machilipatnam Unit as Technical Assistant Trainees, who had undergone a common one year on job training and were placed in wage group-7 in identical scales of pay, were nevertheless subjected to differential treatment in the matter of career advancement opportunities. Technical Assistants having diploma qualification were treated on par with PG Degree holders and for this class the promotional avenues commenced from wage groups 7 to 10 and therefrom to TC-I, in the Executive cadre by reason of inclusion in career path-VI. Further those inducted in career path-VI (including diploma holding Technical Assistants) on completion of 5 years service are automatically entitled for promotion to wage group 8 from wage group 7 and on completion of 5 years service in wage group 8 and on passing the prescribed test to automatic promotion to wage group 9. On completion of 5 years service in wage group 9 employees in the career path-VI are entitled to further promotion to wage group 10 and on completion of 7 years service in this wage group and on passing the prescribed test, to further promotion to the Executive cadre TC-I.

The petitioners who were recruited similarly, were identically circumstanced, were performing identical functions and were along with diploma holders categorized as Technical Assistants and inducted into wage group-VII initially, were however placed in career path-V in the 1991 career plan, they were entitled for promotion only up to the non-executive cadre – wage group 10, but not to the executive grade i.e., TC-I and beyond. Even in the number of years of service required for promotion from wage group 9 to 10 a distinction is made between those in career path-V and those in career path-VI. In career path-VI employees who have completed 5 years of service in wage group 9 are entitled for promotion to wage group 10, whereas 6 years is required to be put in wage group 9 for those included in career path V before

they become eligible and entitled for promotion to wage group 10. Further for the first time in the 1991 career plan, three Executive Cadres– TC-I, II and III (Technical Cadre), were introduced as an extension of the non-executive career channel to avoid stagnation of employees in the non-executive cadre. As a result, on completion of the required service and passing of the test, employees in the non-executive cadre would be entitled for promotion to the executive cadres. This facility is however available only to employees included in career path VI but not to the petitioners who are placed in career path-V, by the 1991 career plan.

As the 1991 career plan facially discriminated between the petitioners' class and the diploma holders both of whom were recruited as Technical Assistants with identical on job training, similar functions and responsibilities in the Machilipatnam Unit of BEL, the petitioners filed W.P. No. 26203/99 seeking a declaration that their placement in career path V is arbitrary and discriminatory, and a consequential direction to the respondents to treat them on par with diploma holders in Engineering as regards the terms and conditions of service and to place them in career path VI for promotion to higher grades.

During the pendency of the above writ petition another Memorandum of Settlement was entered into between the respondent-Management and the Workmen of the Machilipatnam Unit of BEL, u/Sec.12(3) and 18(3) of the Industrial Disputes Act, 1947. This Memorandum of Settlement incorporated a modified career plan. Paragraph 9.1 of the Memorandum of Settlement dated 28.4.2000 specifically recorded that the objections (claims) raised by the petitioners (in W.P. No.26203/99) would be decided as per the order of this court. It must therefore be considered that the grievance of the petitioners in W.P. No.26203/99 was not extinguished by the Memorandum of Settlement dated 28.4.2000.

By an office order dated 17.7.2000 of the respondent-Management, the modified career plan pursuant to the settlement dated 28.4.2000, was directed to be implemented, w.e.f. 1.5.2000. This modified career plan is referred to herein as the career plan 2000. Paragraph-4 of Annexure-A of the career plan 2000 sets out six career paths which are identical to those specified in the 1991

career plan. Annexure-II of the career plan 2000 sets out six career paths for the existing employees which are identical to those specified for existing employees in the 1991 career plan. Even in the career plan 2000, the petitioners class is fitted into career path-V while the diploma holders into career path-VI. The only benefit now conferred to those inducted into career path-V, is that after advancement into wage group-10, employees in career path-V who have put in 5 years and have a satisfactory record of service would be entitled for promotion to TC-I. Annexure-III to the career plan 2000 has specified the equivalence of qualifications. According to this annexure, Graduates include those having B.A., B.Com. or B.Sc. (Science, Mathematics and Computer Science) qualifications; Diploma Holders include holders of Diploma in Engineering of a recognized institution of at least 3 years duration in the relevant subject and Post-Graduation includes M.A., M.Com. and M.Sc. (Science, Mathematics and Computer Science). Employees included in career path-VI, (including the diploma holding Technical Assistants) are however entitled to growth from wage group 10 directly to TC-II on completion of 5 years service and satisfactory performance in tests and service record.

As the petitioners (Graduate Technical Assistants) continued to be treated distinctly and unfavorably vis-à-vis diploma qualified Technical Assistants and were subjected to restricted career opportunities, even under the career plan 2000, they filed W.P. No. 21106 of 2000, in substance assailing the Memorandum of Settlement dated 28.4.2000 and seeking a direction to the respondents to treat them on par with Diploma Holders as regards the terms and conditions of service and to place them in career path-VI for promotion to higher grades.

The Challenge :-

The grievance of the petitioners set out in the two writ petitions, though directed against two separate career plans (promotional policy) is however substantially the same and may be summarized as under:

A) The Science Graduates and Diploma qualified technical assistant trainees were recruited under a common policy in the Machilipatnam Unit, were subjected to an identical in-service training, the merit was commonly evaluated for recruitment, on completion of training they were identically put in wage

group VI and thereafter together upgraded to wage group VII during 1987 and on successful completion of trade test and interview they were absorbed into the permanent cadre on an assessment of their interse merit without distinction between Science Graduates and Diploma holders.

(B) In the main departments in the Mechanical and Optical work areas connected with production and production related work Science Graduate Technical Assistants were employed. The petitioners have filed a "flow chart" (pleaded in para-11 in WP 21106 of 2000) showing the Diploma holders and Science Graduates' participation in various departments relating to production of optical instruments. According to this flow chart (not contested in the counter affidavit) while Diploma Holders were employed in mechanical areas such as production control, component fabrication shops, inspection, testing and the like, Science Graduate Technical Assistants work in optical areas of identical nature. The flow chart also shows that these several operations of the optical and mechanical areas are integrated processes.

(C) In the Machilipatnam Unit alone 10^{th} Class qualified candidates are imparted 3 year in-service training and are treated as equivalent to ITI certificate holders during recruitment; B.Sc. (MPC) graduates were factually treated as equivalent to Diploma Holders in Engineering for recruitment as Technical Assistant Trainees and for absorption in the permanent cadre as Technical Assistants; and candidates possessing M.Sc. (Tech) PG Degree in Optics are treated on par with the Graduates in Engineering.

(D) The Machilipatnam unit is the only unit of BEL which is optic based and its operations are distinct from other units of BEL. The B.Sc. (MPC) Graduates in the Machilipatnam unit have always been distinctly treated vis-à-vis other graduates who are recruited to work as Laboratory Assistants and in the clerical cadre. These other graduates were never posted in production departments nor were imparted training at the time of recruitment.

(E) Though in principle, employees of the BEL are liable to be transferred from one unit to the other, since 1984 till date transfer of non-executives of the Machilipatnam unit to the other units of the BEL was only made on the employee's request or on medical grounds. Following of a distinct career plan for the Machilipatnam Unit vis-à-vis other units of BEL would not therefore

result in any administrative inconvenience. One Mrs. Renuka Devi, recruited in the Machilipatnam unit with a 10th class qualification and imparted 3 years training was placed in career path-V along with ITI candidates, pursuant to the 1991 career plan. She was transferred to the Hyderabad unit of BEL and continued in career path V, though the 3 year training imparted to a 10th class candidate and placement in career path V is peculiar only to the Machilipatnam unit (vide ground-H para-11 in WP 26203/99).

(F) As B.Sc. (MPC) Graduate qualified and Diploma holding Technical Assistant Trainees were all treated identically since recruitment and employed in integrated processes, their dissimilar and distinct treatment by the 1991 career plan as well as the career plan 2000 constitutes hostile, unreasonable and arbitrary classification of a homogeneous and integrated class of employees.

(G) In the absence of a Diploma course in Optics, Diploma holders who in fact hold a Diploma in Mechanical Engineering cannot be considered as possessing either a higher qualification or higher degree of skill vis-a-vis B.Sc. (MPC) Graduates. As all Technical Assistants perform substantially similar nature of work, in integrated technical processes in the filed of Optical Engineering, treating Diploma holders preferentially for promotion and other benefits is a policy that is not based on any intelligible differentia having a rational nexus with the objects sought to be achieved.

(H) Six of the petitioners are Post Graduates. While petitioners 2,4 and 9 have a Post Graduation in M.Sc. (Tech), petitioners 7 and 15 have a P.G. in Physics while the 3rd petitioner is a Post Graduate in Mathematics. As the qualification prescribed for career path VI in both the 1991 career plan as well as the career plan 2000 is “Diploma in Engineering or equivalent/Post Graduation”, these petitioners ought to have been placed, in any event, in career path VI and not career path V.

The Defence :-

In W.P. No. 26203/99 the respondents filed a counter affidavit contending, to the extent relevant and material for the purpose of the writ petition, as under:

A. The writ petition is not maintainable as the petitioners being workmen

and governed by the Industrial Employment Standing Orders of the Company, have to pursue their remedy, if any, under the provisions of the Industrial Disputes Act, 1947.

B. The petitioners are bound by the Memorandum of Understanding dated 11.2.1999 reached between the management and the workmen. The 1991 career plan was implemented w.e.f. 11.1.1991 by the office order dated 27.2.93. The aspect relating to the fitment of the existing Technical Assistants with B.Sc. qualification in career path VI on par with diploma holders was considered by the corporate office in view of Para-5 of the Memorandum of Settlement and rejected by the order dated 15.9.95. The concerned union as well as the writ petitioners were informed of the decision.

C. There is no violation of the provisions of Articles 14 and 16 of the Constitution of India, as alleged. While the petitioners are employed on the Optics Manufacturing and Testing areas the diploma holders are employed in different areas, in fabrication and assembly. The nature of duties performed by the petitioners and the diploma holders are different. Therefore the petitioners cannot legitimately claim equal treatment with diploma holders.

D. Science graduates (petitioners' class of Technical Assistants) were recruited along with diploma holders, were trained and on completion of training were absorbed into permanent cadre and placed in wage group-VII.

E. The petitioners' contention regarding the recommendation of a four Member Committee constituted by the management during 1989-90 (to study and submit a report regarding the technical equivalence of B.Sc. (M.P.C.) Graduates with Diploma holders with reference to requirements of the Machilipatnam Unit) and that the Committee submitted its report holding that B.Sc. (MPC) Graduates appointed as Technical Assistants in the Machilipatnam Unit possess qualifications equivalent to diploma holders, has no

relevance in view of the 1991 career plan.

F. As the petitioners have agreed, *qua* the condition in the orders of their appointment, that during employment they would be governed by the rules and regulations of the service as amended from time to time, they are not entitled to any of the claims urged by them, in view of the provisions of the 1991 career plan.

G. The petitioners' contention that Optical technology is not available in ITI is admitted.

H. Employees with similar qualifications as the petitioners are working in the same career path in other units of BEL including the Pune and Taloja units. Promotional avenues available for diploma holders in career path-VI is not an executive cadre but an extension of the non-executive cadre known as Technical cadre 1,2 and 3. This career opportunity is however not available for other employees of BEL except for diploma holders.

I. As per the requisition of the BEL only graduates including the petitioners were sponsored by the employment exchange. Acquisition (by some of the petitioners) of PG qualification is not relevant.

In response to the averments in W.P. No. 21106 of 2000, the respondent-Company filed a very brief counter affidavit, contending that the writ petitioners had already filed W.P. 26203/99, which is pending and have filed the present writ petition without disclosing that fact and that the petitioners' contention in both the writ petitions that they should be treated on par with the diploma holders was not accepted by the respondent-Company.

The averment in this counter affidavit that the petitioners failed to disclose the fact regarding the filing of W.P. No. 26203/99, is incorrect. In Para-5 of W.P. No. 21106 of 2000 the pendency of W.P.No. 20203/99 is pleaded. There is thus no suppression of this material fact. In any event W.P. No. 21106 of 2000

is filed challenging the career plan 2000. None of the other assertions in W.P. No. 21106 of 2000 have been adverted to in the counter affidavit filed therein.

The Resolution :-

The petitioners are aggrieved by the stultification of their career prospects under the 1991 Career Plan, the non-resolution of their grievance under the Career Plan 2000 and the discriminatory and unfair treatment meted out to their class *vis-à-vis* the Diploma Holders. The petitioners principally contend that the two career plans (1991 & 2000) violate the constitutional injunctions to equality under Articles 14 and 16. The respondent Corporation, the BEL does not contest the position that it is an agency and instrumentality of the State and is thus obligated to treat its employees fairly, without hostile discrimination and consistent with the constitutional mandate. This is also an incontestable position. For violation of their fundamental rights, the petitioners have a guaranteed right to approach the Supreme Court itself, for remedy u/Art. 32 of the Constitution. In such Constitutional context, throwing out these writ petitions on the jejune ground that the petitioners could avail a remedy under the Industrial Disputes Act, 1947 tantamount to abdication of its Constitutional obligations by this court. In this context it must be noticed that the petitioners challenge the Career Plans (1991 & 2000) of the respondent-Corporation on the ground that these violate their fundamental right to equality guaranteed under Articles 14 and 16 of the Constitution. The grievance is not that some right conferred by a statute such as the Industrial Disputes Act, 1947 ('ID Act') is violated.

On behalf of the BEL reliance has been placed on a decision of the Supreme Court in ***Basant Kumar Sarkar and others v The eagle Rolling Mills Ltd., and others ()***, for contending that the writ petitions are not maintainable as the remedies provided under the ID Act are appropriate and not the remedy u/Art. 226. In this case the facts considered by the Supreme Court:- The petitioners were all employees of industrial establishments which are not an instrumentality of the State. The main challenge was to the validity of Sec.1(3) of the Employees State Insurance Act 1948. The Patna High Court rejected the challenge to the *vires* of the Act and held that the question as to whether

notices issued by the 1st respondent were invalid, could not be considered u/Art. 226 of the Constitution of India and should be more appropriately raised in the form of a dispute, by the appellants, u/Sec.10 of the ID Act. The Supreme Court confirmed the view of the Patna High Court that the provisions of the ESI Act are valid. On the decision of the High Court that the question as to the validity of the circulars could not be considered u/Art.226, the Supreme Court observed as under:

> "Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievance in respect of the said notices and circulars is to take recourse to Section 10 of the Industrial Disputes Act, or seek relief, if possible, under Ss.74 and 75 of the Act."

This judgment is not therefore an authority for a principle that where a remedy is available under a statutory provision such as the ID Act, there is a bar to the jurisdiction of this court u/art. 226 of the Constitution. It is trite that there can be no legislative provision which circumscribes the plenitude of the constitutional jurisdiction of this court u/Art. 226 of the Constitution, vide – ***L.Chandrakumar v Union of India ()***.

Another decision relied on behalf of BEL is ***U.P. State Bridge Corporation Ltd., and others v U.P. Rajya Setu Nigam S.Karamachari Sangh ().*** In the context of the facts therein the Supreme Court held following an earlier decision in ***Premier Automobiles Ltd., v Kamlekar Shantaram Wadke ()***, that though there could be no limitation on the court's power u/Art 226, nevertheless a strong case need be made out for the High Court to deviate from the principle that where a specific remedy is given by the Statute, the person who insists upon such remedy could avail of the process as provided in that statute and in no other manner. It requires to be noticed that this principle was reiterated by the Supreme Court in the above case in a factual situation where the rights and obligations sought to be enforced by a trade union in the writ petition before the High Court were those created by the ID Act.

In ***L.Hirday Narain v Income-Tax officer, Bareilly ()*** the Supreme Court in substance held that where the High Court entertained a petition and heard the parties on merits it should not thereafter reject the writ petition on the ground that some statutory remedy was not availed off.

It is a settled principle that existence of an alternative remedy is not a bar to the constitutional jurisdiction u/Art.226 of the Constitution, vide ***Ram and Shyam Company v State of Haryana and others (); Whirlpool Corporation v Registrar of Trade Marks, Mumbai and others (); Harbanslal Sahnia and another v Indian Oil Corporation Ltd., and others ().***

In ***Roshan Lal Tandon v Union of India ()*,** a Constitution Bench of the Supreme Court laid to rest the assumption that the relationship between a Government and a Government servant is contractual all through. The court pointed out and held that the origin of the Government service is contractual, once appointed to a post or office in Government, the rights and obligations of the employer and employee are determined not by consent but by statute or statutory rules, the status of the parties and therefore the rights and obligations are determined by the law and in the enforcement of these, the society has an interest. This principle enunciated by the Supreme Court in the context of Government service is equally applicable to service under an authority or an instrumentality bearing the impress of a State.

The objection of the BEL to the maintainability of the writ petitions is thus misconceived and is rejected.

Another contention of the respondent-Corporation is that as the fitment of the petitioners in Career patch VI was considered and rejected by the respondent Management by an order dated 15.9.1995 and this decision is final according to the terms of the career plan 1999, the petitioners are disentitled to any remedy. This contention is factually and legally misconceived. The terms of the Memorandum of Understanding dated 11.2.1993 [para-5(b)] unequivocally record a discord between the management and the recognised union in respect of the grievance of the petitioners and this issue was left for a decision of the management. Even otherwise fundamental rights cannot be trampled by the State on a plea that these had been waived or that a citizen or person had acquiesced in the violation. This is a position too well settled to justify a familiar tour of the precedents.

The lynchpin of the respondents' defence appears to be that as a common career policy for all the units of the BEL is a desideratum and as the integrated treatment and recruitment of Diploma and Degree holders is a factor that is

insular to the Machilipatnam Unit and is found not in the other units, in the interest of having a common policy for all the units, the impugned career plans were conceived and issued. Is this an acceptable defence to the complaint of arbitrariness and inequal treatment, needs to be considered.

The Core Facts and corollary issues :-

A. The petitioners with B.Sc. (MPC) qualification as well as Diploma holders were sponsored together by the employment exchange on a requisition made by the Machilipatnam Unit of BEL for recruitment as Technical Assistant Trainees. The requisition was for sponsorship of candidates with either a Diploma or B.Sc. (MPC) Degree qualification. On sponsorship and eventual recruitment, candidates possessing the aforesaid qualifications were put on an identical monthly stipend during the one year period of training and later absorbed in the same scale of pay of Rs. 424-13-645 and designated as Technical Assistants-II.

B. In February 1987 all Technical Assistants-II whether having B.Sc. (MPC) qualification or a Diploma qualification and who were initially placed in wage group-VI were upgraded in a single order. A similar exercise followed in July 1987

C. A proceeding bearing reference No. 422/01/1988 dated 3.12.1988 establishes that 13 Technical Assistant Trainees who had successfully completed the Trade test and interview were absorbed into the permanent cadre noted against their names, in the order of merit specified in the order. These proceedings show that a common order of merit is maintained between all Technical Assistant Trainees while absorbing them into the permanent cadre without any distinction between those having the Science Graduation qualification and those having Diploma qualification.

D. Such composite recruitment of Science Graduates and Diploma

holders to the post of Technical Assistants, their initial common recruitment as Technical Assistant Trainees, putting them to a common one year in-service training and eventual integrated absorption in the post of Technical Assistants-II with identical treatment in terms of pay (during training period and after absorption in permanent cadre) as well as a composite upgradation from Wage Group-VI to Wage Group-VII, took place in the Machilipatnam Unit of BEL from 1983 to 1985. A common merit list was maintained abd followed in respect of Technical Assistants as already stated. In 1987 another batch of Technical Assistant Trainees were recruited and after the one year training were directly absorbed into Wage Group-VII. Thus from 1983 to 1987 recruitment of Technical Assistants was commonly of candidates having either a Diploma or B.Sc.(MPC) qualification.

E. Only in 1993 and pursuant to the 1991 Career Plan was a distinction drawn between Technical Assistants having a Diploma qualification and those with a B.Sc. (MPC) qualification. The details of the distinction and the negative impact such distinction has on the Technical Assistants having a B.Sc. (MPC) qualification has already been adverted to herein above.

F. No Diploma course in Optical Engineering is offered in any of the Polytechnics in the country. Such of the Diploma holders recruited for appointment as Technical Assistants are diploma holders in Mechanical Engineering and together with other Technical Assistants having B.Sc.(MPC) qualification were assigned work in the production areas relating to optics in the Machilipatnam Unit of BEL.

G. Unlike in other units of BEL, in the Machilipatnam unit B.Sc.(MPC) graduates are recruited as Technical Assistants after an in-service training and are posted to work in production areas [This assertion in ground (d) in W.P.No. 26203/99 is uncontroverted].

H. The assertion in ground(h) in W.P.No. 26203/99 that from 1.9.1984 till date no persons belonging to the non-executive cadre of the Machilipatnam unit were transferred to other units of BEL except at their request or on medical grounds and that therefore a distinct career plan could be maintained for the Machilipatnam unit having regard to its special features, has not been denied or contested in the counter affidavit of the BEL.

Another contention of the petitioners that the Diploma holders who were recruited along with them as Technical Assistants had Diploma qualifications in Mechanical Engineering and not in Optics and since B.Sc. (MPC) holders and such Diploma holders were together recruited and integrated into the cadre of Technical Assistants, there was no justification for placing persons belonging to such integrated cadre into different career paths and that such classification contrived by the BEL is based on no intelligible differentia having a rational nexus with the objectives sought to be achieved, has not been responded to in the counter.

The essential complaint of the petitioners is that the impugned career plans (1999 and 2000) violate the equality injunctions of Articles 14 and 16 of the Constitution of India; that the further classification by the BEL amongst Technical Assistants recruited and constituted a homogeneous and integrated class, for fitment into different career paths, is an artificial classification without justification and based on no intelligible differentia. According to the petitioners, facially the classification is on the basis of educational qualifications viz., between Diploma holders and B.Sc. (MPS) holders. The Diploma holders however do not have a Diploma in Optical Engineering or any discipline relating to Optics. As Diploma qualification in the Mechanical Engineering is in no way relevant to the posts for which they are recruited or distinct from a B.Sc. (MPC) qualification, in the context of either recruitment to the post of Technical Assistant or in relation to the functions to be performed by the holders of this post in the Machilipatnam Unit of the BEL, the qualification criterion, for classification is thus an irrelevant criterion and unsustainable, is the thrust of the petitioners' case.

In the light of the aforesaid adversarial positions this court is required to

consider whether the classification contrived between the Diploma holding Technical Assistants and Technical Assistants having B.Sc. (MPC) qualification, as applied to the Machilipatnam unit of the BEL, is valid and sustainable.

In ***Budhan Choudhry and others v State of Bihar ()*** expounding the principles underlying the doctrine of classification, a 7 Judge Constitution Bench of the Supreme Court, per *S.R.Das,J*, held as under:

> " It is now well established that while Art.14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis; namely, geographical or according t objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act and of consideration. It is also well established by the decisions of this court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure."

Again in ***Shri Ram Krishna Dalmia v Shri Justice S.R. Tendolkar ()***, S.R. Das C.J, culled out the following principles to be borne in mind when a court is called upon to consider the constitutionality of any law or the validity of any State action attacked as discriminatory and violative of the equal protection of laws (Art.14):

> " (a) That a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself ;
>
> (b) That there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles ;
>
> (c) That it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds ;
>
> (d) That the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be clearest ;
>
> (e) That in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every State of facts which can be conceived existing at the time of

legislation ; and

(f) That while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. ”

The above principles enunciated in the context of Art. 14 are equally applicable in the context of Art. 16 as both these Articles constitute complementary facets of the guarantee of equality – Art.14 being the genus while Art.16 is a facet/species of the same constitutional value.

It must be recognised that classification *per se* is not the constitutional goal. Articles 14 and 16 of the Constitution injunct the State to so conduct itself, in every facet of its conduct, Legislative or Executive as to avoid denial to any person, equality before the law or the equal protection of the laws. This is a charter for equality. Equality of opportunity, in a career in Government service, is an emphatic guarantee by and under the Constitution. The guarantee extends to all stages of such career and includes promotions and facets of career advancement. The guarantee in practice, translates to an obligation to ensuring equal promotional opportunities for persons who fall substantially within the same class. A necessary corollary of this obligation is that the State may, for the purpose of ensuring such equal opportunity, undertake a classification of employees, firstly for identifying the class and thereafter for distinguishing persons of one class from those of another.

In the matters of promotions a classification based on variant educational qualifications is presumptively reasonable and valid. However, the educational qualification on which the classification is based must be rationally related to the post to which promotion or appointment is made, for the qualification to sustain the classification. In the absence of such rationality and nexus established between the educational qualification and the post, the qualification must be presumed to be a facade for camouflaging an unconstitutional State act of hostile discrimination. As is well established, discrimination is the essence of classification but violates the constitutional guarantee only when the discrimination is based on an unreasonable basis.

In cases involving challenge to State action on classification grounds this court has a delicate and balancing task to perform. It cannot proceed to make a fine and mathematical evaluation of the basis of classification. To do so would lead to the danger of over-stepping the courts bounds, by substituting its judgment for that of the State, on the need to classify or the desirability of achieving a particular object. This area is normally excluded for the court and exclusively consecrated in the Legislative or Executive branches. On the other hand if challenged State classifications are not put to strict judicial scrutiny in appropriate cases, the Executive branch might pursue classification as the goal and resort to subtle and shady classifications, grossly violative of the equality injunctions of the Constitution. The Executive would convert the tool of classification into a licence to annihilate the guarantee of equality. As pointed out by Krishna Iyer, J, in ***The State of Jammu & Kashmir v Triloki Nath Khosa and others ()***:

> *"5. Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. if in this case Government had prescribed that only those degree holders who had secured over 70% marks could become Chief Engineers and those with 60% alone be eligible to be Superintending Engineers or that foreign degrees would be preferred we would have unhesitatingly voided it.*
>
> *6. The role of classification may well recede in the long run, and the finer emphasis on broader equalities implicit in the concluding thought of the leading judgment will abide. The decision in this case should not – and does not – imply that by an undue accent on qualifications the Administration can cut back on the larger tryst of equalitarianism or may hijack the founding and fighting faith of social justice into the enemy camp of intellectual domination by an elite. The Court, in extreme cases, has to be the sentinel on the qui-vive."*

The dangers of over emphasis on classification to the point of negation of the doctrine of equality was emphasised again in ***Mohd. Shujat Ali and others v Union of India and others ()***:

> *"25. But the question is: what does this ambiguous and crucial phrase "similarly situated" mean? Where are we to look for the test of similarity of situation which determines the reasonableness of a classification? The inescapable answer is that we must look beyond the classification to the purpose of the law. A reasonable*

classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the legislature should have the right to classify and imposed special burdens upon or grant special benefits to persons or things grouped, together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. The test which has been evolved for this purpose is – and this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation.

26. But we have to be constantly on our guard to see that this test which has been evolved as a mater of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the legislature does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J, in State of Jammu & Kashmir v Triloki Nath Khosa (AIR 1974 SC 1) "the guarantee of equality will be sub-merged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments." *Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end*

in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must therefore, be guided by the words of caution uttered by Krishna Iyer, J in AIR 1974 SC1."

In the case on hand B.Sc.(MPC) qualification holders and Diploma holders were commonly recruited; absorbed; appointed to permanent posts; given the same stipend during a common training period; put in identical scales of pay; upgraded to the next scales of pay and placed in a common merit list and were employed in integrated and interdependent technical processes in the Optics Unit, establishing beyond doubt that they were integrated members of a homogeneous class, of Technical Assistants. The petitioners have pleaded and shown that Diploma holders and B.Sc. Technical Assistants work in integrated processes functionally interdependent, in the optics department of the Machilipatnam Unit of BEL; they have also pleaded, a plea not controverted, that a Diploma course in Optics is not available in any educational institution in the country; they have also pleaded that Diploma holders in Mechanical Engineering have been recruited along with them [B.Sc.(MPC)] as Technical Assistants; they have further pleaded, a plea not controverted, that a Diploma in Mechanical Engineering is a qualification that has no superior or distinct nexus with the functions of a Technical Assistant *vis-à-vis* the qualification of B.Sc. (MPC); they have further and categorically argued that the further functions to be performed in higher echelons of the technical service in the Optics Department of the Machilipatnam unit are not better or more beneficially served by Diploma holders in comparison with B.Sc. (MPC) holders. This argument has also not been met by the BEL.

The burden is clearly on the petitioners who attack the rationality and validity of the Career Plans (1999 & 2001) to show that the classification by BEL (between the Diploma holders and B.Sc.(MPC) graduates) for further career opportunities, is unrelated to the object of efficiency in the (technical) service. This burden has been *prima facie* discharged by the petitioners. By their pleadings and data (adverted to supra) the petitioners are able to shift the presumption of validity of the impugned career plans (1991 & 2000) to the State (BEL), to show that the suspect career plans are based on a classification that

marks distinctions that are intelligible and rationally related to the objects of the career plans. Therefore, the BEL is required to show that the classification is legitimate and the variant educational qualifications [Diploma and Mechanical Engineering *vis-à-vis* B.Sc.(MPC)] have a rational nexus with the functions and duties attached to the post (Technical Assistants) and to higher positions, to which the integrated and homogeneous class of Technical Assistants are discriminately provided dissimilar opportunities for advancement. The BEL is also required to establish that such dissimilar opportunities (Diploma and Graduate qualification based) are intended to achieve some legitimate and administrative purposes such as efficiency in service or the like. As pointed out in ***T.N.Khosa's*** case (12 supra) and reiterated in ***Shujat Ali's*** case (13 supra):

> *"To permit discrimination based on educational attainments not obligated by the nature of the duties of the higher posts is to stifle the social thrust of the equality clause."*

The respondent-BEL has not feigned to justify the classification, between the Diploma holders and B.Sc.(MPC) Technical Assistants, in the impugned Career Plans, by either pleading or establishing that the qualification of a Diploma (in Mechanical Engineering) is in any way rationally related to better or more efficient performance of functions and duties in the higher categories of Technical service or in higher wage groups.

The singular plea of the BEL, as discernable from the counter affidavits and the arguments put forth at the Bar, is that the impugned career plans are intended to achieve a common scheme of career opportunities for all the (9) units of BEL. Implied in this stand of the BEL is the admission that the distinct and insular historical and factual circumstances of the Machilipatnam Unit of the BEL (the only unit of BEL where an Optics Department/Unit exists) have not been considered relevant while formulating career plans common to all the units. The question is whether the asserted nebulous administrative desire of having a common career plan for all the units of the BEL can be pursued to the detriment and subversion of the equality injunctions of the Constitution.

It is an equally well settled and venerably established principle of the doctrine of equality that the doctrine is offended not only when equals are treated

unequally but also when unequals are treated alike. Articles 14 and 16 of the Constitution are offended, both when the State finds differences where there are none and when it fails to make a distinction when there are such distinctions. Differently phrased the doctrine of equality enjoins that equals could not be treated unlike and that unlike could not be treated alike – vide ***Western U.P. Electric Power and Supply Co., Ltd., v The State of U.P. (); K.T. Moopil Nair v State of Kerala (); Mohd. Usman v State of AP (); Prem Chand Somchand Shah and another v Union of India and others () and Gouri Shankar and others v Union of India and others ().***

On account of the historical circumstances, the specialised processes in the field of Optics and manufacture of optical instrumentation in the Machilipatnam Unit and other factors, the recruitment of Diploma holders (in Mechanical Engineering) and of B.Sc.(MPC) qualified, as Technical Assistants and such composition of the cadre of Technical Assistants in the Machilipatnam Unit are all features peculiar and distinct to the Machilipatnam Unit of BEL. Technical Assistants of Machilipatnam Unit are thus unlike Technical Assistants in other units of BEL. This dissimilarity and distinguishing feature requires and obligates a classified treatment of the Technical Assistants of the Machilipatnam Unit while framing career opportunities/advancement scheme for the several categories and wage groups of the employees of all the units of the BEL. The need to treat the Technical Assistants of the Machilipatnam unit differently from the Technical Assistants of other units of BEL is a need obligated by the requirement to confirm to Articles 14 and 16 of the Constitution. The failure to incorporate such a classification in the impugned Career Plans (1991 and 2000), is fatal to their validity.

In view of the established principles on the doctrine of equality, the respondent-BEL can not legitimately contend that the administrative convenience of having a common Career Plan for all the Units of BEL justifies the patent violation of the doctrine of equality guaranteed under Articles 14 and 16 of the Constitution of India. This court on the analysis above and on the material placed before it in the case, has found no justification for treating the Diploma holders and B.Sc. (MPC) holders differently or for conferment of superior career opportunities to Diploma holders and to the detriment of the class of B.Sc. (MPC) holders. The only defence of the BEL is one based on the pragmatism of a common career

plan. This is a vacuous defence. In Annexure-III (to both the career plans 1991 & 2000) equivalence of qualifications is spelt out. As per the annexure 'Graduates' include B.A.; B.SC. Science, Mathematics, Computer Science; and B.COM; 'Diploma' includes Diploma in Engineering of a recognised institution of at least 3 years duration in the relevant subject and 'Post Graduation' includes M.A.; M.SC. in Science, Mathematics or Computer Science; and M.COM. The note to Annexure-III stipulates: *"all qualifications are with reference to the area of work and should be relevant to the work of the employee."* Therefore it is apparent that B.Sc. (MPC) graduates presumptively have a qualification relevant to their work and function as Technical Assistants and are therefore similarly circumstanced and identically placed as Technical Assistants having a Diploma in Mechanical Engineering.

This court finds no justification on pragmatic grounds either. It is inconceivable that by appropriate drafting techniques a distinct package in a composite basket of career opportunities could not be evolved, that would take care of the special historical and factual circumstances of the Machilipatnam Unit of BEL. Even otherwise mere administrative inconveniences of this nature have never legitimised or justified subversion of Constitutional guarantees. This plea of the BEL is rejected.

The petitioners (in W.P. 26203/99) have also contended that six of the petitioners are Post Graduates. While petitioners 2,4 and 9 hold M.Sc. (Tech) qualification, petitioners 7 and 15 have Post Graduation in Physics and 3rd petitioner is a Post Graduate in Applied Mathematics. Under both the impugned career plans (1991 & 2000) for induction into career path-VI, Post Graduation and Diploma in Engineering are considered relevant qualifications. All the petitioners were working as Technical Assistants having been absorbed into the said posts much prior to the coming into force of the impugned career plans. They were however not given the benefit of induction into career path-VI. This is one of the petitioners' grievances. In the counter affidavit this grievance is responded to by merely stating that on the requisition of the Company, only graduates including the petitioners were sponsored by the employment

exchange and that acquisition of Post Graduate Degree has no relevance to the issue in the writ petitions. It is axiomatic that the requisition by the Machilipatnam Unit of BEL sent to the employment exchange for sponsoring candidates for recruitment is an irrelevant factor in considering the appropriate fitment of the recruited candidates, in the context of the qualifications prescribed for fitment into various career paths.

On the analysis above, the writ petitioners are entitled to succeed. The Career Plans 1991 and 2000, in so far as they discriminate between Technical Assistants of the Machilipatnam Unit of the BEL, on the basis of Diploma and B.Sc. (MPC) qualifications, in the mater of further career opportunities, are quashed. It is declared that all Technical Assistants in the Machilipatnam Unit of the BEL, irrespective of whether they are Diploma holders or B.Sc. (MPC) Graduates, working in the Optics Department, are entitled to similar treatment and career advancement opportunities. The respondent BEL is directed to restructure its career plan in the light of the principles declared hereinabove. The writ petitions are accordingly allowed. In the circumstances however there shall be no order as to costs.

Date:21.03.2005 ----------

LR Copy to be marked Justice G.Raghuram

(BO)

Pvsn

That Rules Nisi have been made absolute as above.

Wtness the Hon'ble Sri Devinder Gupta, The Chief Justice on this the Twenty first day of March, Two Thousand and Five.

..... REGISTRAR

To

1. One fair copy to the Hon'ble Sri Justice Goda Raghuram(for his Lordship's kind perusal)

2. The General Manager, Bharat Electronics Limited, Machilipatnam Unit, P.B.NO.26, Rabindranath Tagore Road, Machilipatnam – 521 001.

3. Eight(8) L.R.Copies.

4. The Under Secretary, Union of India, Ministry of Law Justice and Company Affairs, New Delhi.

5.The Secretary A.P.Advocates Association Library, High Court of A.P. Hyderabad.

6. 2CD copies